

OPEN RECORDS AND MEETINGS LAW

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The public has the right to know how state and local government functions are performed and how public funds are spent. North Dakota has “sunshine laws,” which provide that all government records and meetings must be open to the public unless a specific law authorizes a record or meeting to be closed.

ALL PUBLIC ENTITIES ARE SUBJECT TO OPEN RECORDS AND MEETINGS LAW.

Public entity includes: *state and local government agencies, rural fire and ambulance districts, public schools, private businesses or non-profit organizations that are supported by or expending public funds, and contractors, if the contractor is providing services in place of a public entity rather than providing services to that entity.* Courts are not subject to open records and meetings law.

Anyone has the right to attend meetings of a public entity or to access and obtain copies of the entity's records, regardless of where they live. Before a public entity may deny access to a record or meeting, it first has to explain which law closes the record or meeting.

- To deny access to records, the public entity must explain, within a reasonable time, the *legal authority* (the specific law) for denying the request. If asked, the entity must put the denial and explanation in writing.
- To deny access to a meeting, the public entity must identify the topics to be considered and the legal authority for closing a meeting before asking the public to leave the meeting room.

Opinion Requests

Anyone may ask the Attorney General to issue an opinion regarding an alleged violation of open records or meetings law. The request must be made within 90 days of an alleged meeting held without notice or within 30 days for other violations of open meetings law or of any open records law (regardless of the date on which the requester became aware of the violation). There is no charge for the opinion, which is issued to the public entity with a copy to the requester.

If the Attorney General finds a violation, the entity has seven days to take the corrective action required by the opinion. Even if the opinion finds that the public entity violated the law, the opinion cannot change, void, or overrule a decision of, or action taken by, the public entity.

- The basic open records and meeting laws are found in Chapter 44-04 of the North Dakota Century Code (N.D.C.C.), beginning at Section 44-04-17.1.

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QUICK TIPS

- Generally, a public entity cannot ask why the records are requested, ask for identification, or require a request be made in writing (or in person).
- A request for *information* is not a request for a *record*. A public entity has no obligation to respond to questions about its duties and functions, or to explain the content of any of its records.
- A statute may declare certain records to be exempt or confidential. If a record is exempt, a public entity may release it or withhold it, at its discretion. If a record is confidential, the public entity either cannot release it or first must redact the confidential information.
- A member of the public does not have the right to *speak* to the governing body at an open meeting, only the right to see and hear what happens at the meeting and to record or broadcast those observations.
- Generally, there is no requirement that a meeting notice be *published* in the newspaper.
- Draft minutes should be made available to anyone who requests them, even if the minutes have not been approved.
- Economic development information identifying the name, nature and potential location of a business considering relocating or expanding within the state can be closed until the business announces its intentions.
- Public employee salary and job performance is open but certain personal and payroll information is exempt or confidential. Generally, a public entity may *not* close a meeting to discuss salary issues or employee job performance.
- A governing body may close a meeting to talk with its attorney *if* the discussion pertains to the attorney's advice regarding a “pending or reasonably predictable” lawsuit involving the public entity.
- Confidentiality clauses in a contract or settlement agreement involving a public entity are against public policy and are declared *void* by state law.

OPEN MEETINGS

“Meeting” means *any gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone, e-mail, or any other electronic communication (either at the same time or in a series of individual contacts).*

If a governing body delegates any authority or assigns a portfolio to two or more people, the newly formed committee also is subject to open records and meetings law.

- The *only* time a gathering of a quorum of members is not a meeting is if it is a purely social gathering—as soon as any public business is discussed, it becomes a “meeting.”

Prior written notice is required for all meetings of a public entity. The notice must include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered at the time of the meeting. For special or emergency meetings, however, *only* the specific topics included in the notice may be discussed.

Generally, there is ***no minimum advance notice period*** for public meetings. Notice must be posted, filed at the central location (or on the entity’s website), *and* given to anyone who has requested it, *at the same time* the members of the governing body are notified of the meeting.

Meeting notices must be filed with the Secretary of State (state agencies), the City Auditor (city-level entities) or the County Auditor (all other entities) **OR** the public entity may choose to post the meeting schedules and notices on its official website. The meeting notice *also* must be posted in the entity’s main office, if it has one, and if the meeting is held elsewhere, at the location of the meeting on the day of the meeting.

Additionally, notice of special or emergency meetings must be given to the entity’s official newspaper and any media representatives who ask for notice of special or emergency meetings. Copies of meeting notices can be obtained from the appropriate office. If asked, a public entity must provide a requester with personal notice of its meetings.

Before a governing body may close a portion of its meeting, it first must convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting. Unless the law *requires* a closed meeting, the governing body must vote on whether to close the meeting.

Any executive session must be tape recorded. Final action on the topics considered in the executive session must be taken during the open portion of the meeting. All substantive votes must be recorded by roll call. ❖

OPEN RECORDS

“Record” includes *all recorded information regardless of physical form (e.g. paper, e-mail, computer file, photograph, audiotape or recording, video, text message, etc.) that has a connection with how public funds are spent or with the public entity’s performance of its governmental functions or its public business.*

Anyone has the right to view or get a copy of public records, regardless of the reason. However, a request must reasonably identify existing records. A request for *information* is not a request for a record under open records law.

A request for public records can be made in any manner - in person, by mail, e-mail, fax, or by phone. The entity must respond to the request within a reasonable time, either by providing the requested record or by explaining the legal authority for denying all or part of the request. Generally, a “reasonable time” is measured in hours or a few days, but depending on the amount and type of records requested and various other factors, it may be several days or weeks.

A public entity may only deny access to or a copy of a record for which there is a specific statute closing all or part of the information. The remaining information is open to the public and must be provided. If a request for records is denied, the entity must explain what specific federal or state law makes all or part of the record closed. If asked, the entity must put the reason for the denial in writing.

- An entity does not have to convert its records to another format, create or compile records that do not exist, or obtain records originating from another public entity that it does not have in its possession.

Access to records is generally free. An entity may charge up to 25¢ a page for copies on standard letter or legal size paper. For other records (photos, maps, etc.), the entity may charge the actual cost of making the copy, including labor, materials and equipment. The entity should inform you if other statutes authorize a different fee.

The first hour of locating requested records (including electronic records) is free. After the first hour, the entity may charge up to \$25/hr for locating records. An entity also may charge up to \$25/hr (after the first hour) for the time it takes to redact any exempt or confidential information.

Generally, electronic records are provided at no cost. However, if providing electronic records takes more than one hour, in addition to charges for locating and redacting, the entity may charge the *actual cost* incurred by Information Technology resources to access and copy the records.

The entity may charge for postage to mail the records (and will need a name and address for mailing purposes). The entity can require payment of estimated costs before copying or releasing the requested records. ❖